

IN THE CARDIFF COUNTY COURT

CASE NO. BS 614159-MC65

CF101741

CF204141

7CF07345

BETWEEN

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

STATEMENT

1. I Adrian Paul Oliver, a partner in the firm of Dolmans of 17 Windsor Place, Cardiff, make this statement with reference to the Defendant's application that Actions BS614159-MC65, CF101741, CF204141 be listed for trial and action 7CF07345 be stayed until after the trial of the three actions and that there be directions for the management of Actions BS614159-MC65, CF101741 and CF204141 up to trial.
2. I present a chronology of the history of this matter to assist the Court in considering the further directions that are required in these actions.

Action BS614159

3. The Claimant's former solicitors served a draft particulars of claim on Action BS614159 in September 1996. The proceedings had been issued in Bristol County Court. An amended particulars of claim was served in September 1997 and a defence was served in December 1997. Re-amended particulars of claim was served in June 1998 and an amended defence was also served in June 1998. In December 1999 a re-re amended particulars of claim was served. A re-amended defence was served in January 2000. A re-re-re amended particulars of claim had been served but in January 2000 the Claimant was refused permission to add by amendment the proposed paragraphs 13 and 14.

4. The parties dealt with disclosure in March to May 2000 and thereafter dealt with exchange of witness statements between May 2000 and August 2000.
5. In September 2000 the matter was transferred to Cardiff County Court and was allocated to His Honour Judge Chambers QC.
6. The 19 incidents with which Action BS614159 are concerned took place between 1993 and 1995.

Action CF101741

7. The Claimant served a particulars of claim in Action CF101741 in March 2001 and a defence was served in May 2001. An amended particulars of claim was served in June 2002. An amended defence was served in September 2002.
8. This action was commenced in Cardiff County Court and was allocated to His Honour Judge Chambers QC.
9. The 14 incidents with which Action CF101741 are concerned took place between 1996 and 2000.

Action CF204141

10. The Claimant as a litigant in person also served a particulars of claim in Action CF204141 in June 2002. A defence was served in September 2002.
11. This action was commenced in Cardiff County Court and was allocated to His Honour Judge Chambers QC.
12. The 5 incidents with which Action CF101741 are concerned took place between 1998 and 2002.

13. From January 2003 the Claimant has pursued each of the three actions as a litigant in person. Whilst not consolidated, the parties and the Court have dealt with all three actions simultaneously hereafter.
14. In May 2003 the Claimant served a list of documents and made an application for a jury trial in respect of all three actions.
15. At a hearing in September 2003 the Claimant produced 3 lever arch files of documents in support of this application. These documents led to an indication from the Claimant that he held "84 lever arch files covering countless, if not ridiculous, appearances in Court relating to the South Wales Police". When questioned by the Court, the Claimant indicated that he reserved the right to put any of these documents to witnesses at trial that he so chose. Accordingly it became clear that the Claimant had not dealt with standard disclosure. The Court therefore ordered the Defendant to assist the Claimant to list all the documents in the possession of the Claimant for the convenience of the Court. This was duly done on behalf of the Defendant and with the co-operation of the Claimant.
16. The Claimant then issued an application for disclosure of documents in the possession of the Crown Prosecution Service in respect of all three actions. In 2004 the Crown Prosecution Service provided disclosure of documentation to the parties in this action.
17. In June 2004, the parties argued their respective positions as to jury trial in all three actions. His Honour Judge Chambers QC reserved his judgment. Judgment was handed down in September 2004 and the Defendant was subsequently granted permission to appeal. In November 2004 the appeal was successful and the decision as to the jury issue was overturned. The Order that was made was for all three actions to be tried by Judge alone. The Claimant's request to appeal

the result of that appeal was refused. In December 2004 the Claimant issued an appeal to the Court of Appeal.

18. There was little or no activity from the Claimant in 2005 or 2006 and pending the Claimant's application as to an appeal, no further directions were issued by the Court.
19. In May 2007 the Defendant was served with a decision of Mr Justice Maurice Kay as to Mr Kirk's application for a second appeal. The same was refused. In June 2007 the Defendant was advised by the Civil Appeals Office that the appellant's further application for permission to appeal was to be heard in July 2007.
20. In August 2007 the Defendant received an order from the Court of Appeal identifying that the Claimant had failed in his latest appeal. The order concluded with the direction that: "a further case management conference before His Honour Judge Chambers be heard at the earliest convenient date with a view to bringing this case to trial as quickly as possible to resolve the outstanding issues".
21. The Court fixed a case management conference for 25 September 2007. At the case management conference His Honour Judge Chambers QC initially sought to set a trial date in March 2008 and then compile directions towards that date. However the Claimant refused to consider the directions proposed by the Defendant. The matter was adjourned until after lunch. The Claimant then sat in his vehicle on double yellow lines outside the Court and indicated to Court staff that he could not re-enter Court. His Honour Judge Chambers QC therefore convened all parties at the car of the Claimant and the Claimant stated that he required an operation. He left the scene. His Honour Judge Chambers QC then abandoned the prospect of fixing a trial date and adjourned the case management hearing to the first available date after the recovery of the Claimant. He also provided the Defendant with a copy of the Claimant's application to stay the

proceedings which the Claimant had not served on the Defendant but had apparently filed at Court without notice to the Defendant.

22. On 9 October 2007 in correspondence to Dolmans the Claimant referred to having issued another “abuse of process” application. In his application he sought various directions to expose the corruption that he stated existed between various government agencies, but also that the Royal College of Veterinary Surgeons should be joined in as a co-Defendant in the proceedings. He also provided a further draft set of proceedings that he wished to issue against the Defendant.
23. The Court then listed these matters for a further case management conference on 30 November 2007. The Claimant issued a further application for “abuse of process” indicating new claims and asserting that the Defendant was guilty of unlawful conduct and perverting the course of justice. He repeated many of his prior allegations as to improper conduct by all those involved in the defence of his civil actions. The Claimant then issued his fourth set of proceedings by serving a particulars of claim in Action 7CF07345. The Court then adjourned the case management hearing to 17 December 2007.
24. At the case management hearing on 17 December 2007 His Honour Judge Chambers QC was not able to obtain the co-operation of the Claimant to a proposal to advance the directions in this case nor to deal with the Claimant’s application to stay the proceedings. The Court took cognisance of the Claimant’s concerns that the Claimant had outstanding issues in other Courts which it was felt should be concluded before advancing these sets of proceedings.
25. The Court therefore adjourned these matters for a further period of two months to permit the Claimant to consider how he wished to advance the case and his further application. In the event the Claimant indicated that he was flying to the West Indies and, taking this into account, the Court ordered that the matter would be re-listed for 18 March 2008.

26. At this hearing, the Court ordered the Claimant to acknowledge receipt of the lists of documents forwarded to him in respect of Actions BS 614159, CF101741 and 7CF0734S under cover of letter dated 16 October 2007. These lists itemised not only the documents of the Defendant but those disclosed by the Crown Prosecution Service and those relied upon the Claimant.
27. On 28 February 2008 the Claimant issued yet a further application purportedly relating to his abuse of process application. He asked that the case be further adjourned until he had received affidavit evidence from the police dealing with his allegation as to the illegal destruction of documents relating to his case, including, on his account, the destruction of custody records.
28. On 29 February 2008 the Claimant submitted a further document to the Court asking for the Royal College of Veterinary Surgeons to be joined as a Defendant in the proceedings.
29. The Claimant wrote to Dolmans on 10 March 2008 indicating that he was not prepared to go to trial until his abuse of application had been heard.
30. The matter came before the Court on 18 March 2008. The Claimant persisted in allegations that the Defendant had failed to disclose documents.
31. His Honour Judge Chambers QC indicated that the Court was not able to deal with such assertions without any specific application being prepared and placed before the Court.
32. The Claimant then asserted that the Court had suppressed or lost documents relating to his case. The Claimant was permitted by the Court to view the Court files that were available but the Claimant

persisted in asserting that some papers had been put in the possession of the Court but had now been removed.

33. The Court considered whether the Defendant should point out to the Claimant the deficiencies in the pleaded fourth action, but eventually ordered that it was appropriate that the Defendant should file a defence by 27 May 2008 (which order was subsequently observed by the Defendant). The Claimant indicated at this hearing that he had a further fifth action which he now intended to issue (although at the time of providing this evidence, Dolmans have not been served with any such set of "fifth" proceedings).

34. After providing these directions the Court ordered a further case management conference on the first available date after 16 June 2008. The Court has subsequently listed these matters for a further case management hearing on 30 July 2008.

35. Actions BS614159-MC65, CF101741, CF204141 were commenced in 1996, 2001 and 2002 respectively.

36. The Claimant has shown himself to be a person who is not prosecuting his actions with appropriate regard to the period of time that has already elapsed since he began his actions. He has failed to accept the rulings of the Court of Appeal as to jury trial and has embarked on an unsuccessful route of appeal without the permission of the Court. This has led to an additional two year period where the directions in this case have not been advanced.

37. In addition the Claimant seeks to add to his allegations even to the present day without recognising the inherent further delay that would be occasioned in such a step.

38. The Defendant would wish that these actions should be listed for trial and should not be further delayed by the linking of the fourth action

with the present three actions, nor the possibility of a fifth action being added to the directions timetable for the three actions. It is the view of the Defendant that the fourth action should be stayed at this time so as not to cause any default in the timetable now being sought from the Court.

39. The Court will no doubt appreciate that the incidents to which these claims relate are now very old and date back to 1993, some fifteen years ago. The Defendant is concerned that there should be no further prejudice to the witnesses who will be required to give oral evidence at the trial after this excessive length of time.

40. At the case management conference on 18 March 2008 His Honour Judge Chambers QC asked both parties to consider their view on the format of the eventual trial of this matter before the hearing on 30 July 2008.

41. The Defendant is of the firm view that the trial of action one, two and three should be listed before a judge alone at Cardiff County Court commencing in March 2009 with a time estimate of 8 weeks. In this regard, Dolmans have already made preliminary enquiries with the Court as to the feasibility of listing such a trial and have been advised that it is not envisaged that there would be inherent difficulties in seeking to obtain a Recorder to be made available for a trial commencing in 2009. Such enquiries have been made on a tentative basis with a view to assisting the Court by the provision of information at the forthcoming case management hearing rather than seeking to usurp the Court's function in seeking to list these matters as appropriate.

42. The Defendant is of the provisional view that, provided a firm trial date is fixed for 2009, it should be possible for the Defendant to seek to obtain the attendance of witnesses at trial, bearing in mind the length of the trial. It is envisaged that all surviving witnesses should be available

to give evidence at some stage over an 8 week trial, provided indulgence and some flexibility is granted by the Court as to how these matters are taken. It is suggested by the Defendant that seeking to fix a trial in this way and then arranging the witnesses around the set dates is a preferable option than seeking to obtain the availability of considerable numbers of witnesses and then seeking to obtain a date when all would be available.

43. It is unclear at this stage whether the Claimant intends to conduct the proceedings himself as a litigant in person. If this is the case, (and the Defendant has received no indication to the contrary) then it is envisaged that there will necessarily be a need for some flexibility as to how witnesses are to be called as estimates of duration of witnesses in evidence are likely to be reflect the Claimant's lesser experience of estimating the time that witnesses might take in their evidence. The proposal is therefore the Defendant's best means of assisting the Court as to the potential of case managing the introduction of evidence at an eventual trial date.

44. The parties have not simultaneously exchanged witness statements on actions two and three. During the Defendant's investigation of actions two and three, the Defendant has obtained further witness statements which would assist the Court as to the determination of the issues in respect of action one. This is particularly important in the light of the greater significance that these actions have now taken in view of the additional allegations introduced by the Claimant and his assertion that all these matters constitute some form of "harassment" of the Claimant by the Defendant and her officers.

45. In the circumstances, the Defendant invites the Court to order the parties to simultaneously exchange witness statements on actions one, two and three by 1 December 2008.

46. Whilst it is the Claimant's obligation to prepare trial bundles, the Defendant recognises that the Claimant is a litigant in person and in view of the particular circumstances of this case, the Defendant suggests that the trial bundles should be prepared by the Defendant. The Court is invited to order the Defendant to prepare and serve trial bundles by 14 January 2009.

47. Actions one, two and three concern many different allegations relating to incidents occurring on different dates. It is respectfully proposed that the parties and the Court would be assisted by a schedule identifying each incident, the allegations made, the relevant witness statements and the relevant documents. For the reasons set out above the Defendant recognises the difficulty inherent in a litigant in person being asked to prepare such a document and in the circumstances the Court is invited to order the Defendant to prepare and serve such a schedule by 14 January 2009.

Action 7CF07345

48. As identified above, the Claimant issued a fourth action in December 2007 to which a defence was served in May 2008. This action purports to deal with a further 52 incidents from 1993 to 2007. It is respectfully suggested that the Defendant should not be required to investigate these 52 incidents until actions one, two and three have been tried. The Court is invited to stay action 7CF07345 until after the trial of actions one, two and three.

49. A great deal of public funds has been spent on these matters and the Defendant is concerned that actions one, two and three should be concluded by trial.

Summary

50. The Defendant has a concern that the further procrastination of these matters by the Claimant will prejudice the Defendant's position as to the defence of these matters. The Defendant has already been put to significant expense in the defence of these matters and it is unclear whether the Claimant will be in a position to meet any order for costs that might be made against him.
51. Further the Defendant is already faced with the difficulty of officers being asked to recall events that occurred many years ago. As time goes on, officers will naturally retire from their employment as police officers and might become subject to ill health. Further there is a prospect as time continues that witnesses might pass away.
52. For these reasons in addition to the view expressed by the Court of Appeal in these matters the Defendant invites the Court to seek to set a date for the trial of these matters and seek to order such directions as the Court deems appropriate to progress these matters to trial. However the Defendant submits that this should not apply to the recently issued fourth set of proceedings where, based on the prior experience as to progress of proceedings one, two and three, considerable time is likely to require to be devoted, both by the Defendant and the Court, to achieving a position where the matter might be brought on for trial.
53. It is therefore the view of the Defendant that the fourth matter should be the subject of a stay of proceedings pending the conclusion of actions one, two and three.
54. The Defendant invites the Court to have regard to the proper allocation of Court's time and resources. It might assist both the court and the parties if all were working towards a set date for trial rather than permit the Claimant to put off the trial of this matter by raising further issues at

pre trial reviews by reference to further allegations or by the pursuit of vague and indeterminate requests to the Court.

Signed: 

Dated: 25 July 2008

Solicitor for the Defendant.